

By: Murr

H.B. No. 20

A BILL TO BE ENTITLED

AN ACT

relating to the release of defendants on bail.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act may be cited as the Damon Allen Act.

SECTION 2. Article 1.07, Code of Criminal Procedure, is amended to read as follows:

Art. 1.07. RIGHT TO BAIL. (a) Except as provided by Subsections (b) and (c) or Chapter 17, any person [All prisoners] shall be eligible for bail, [bailable] unless the person is accused of a [for] capital offense [offenses] when the proof is evident. This provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

(b) A person accused of a violent or sexual offense may be denied bail pending trial if a judge or magistrate determines that requiring bail and conditions of release is insufficient to reasonably ensure:

(1) the person's appearance in court as required; or  
(2) the safety of the community, peace officers, or the victim of the alleged offense.

(c) A person charged with an offense under Section 19.03, Penal Code (capital murder), or a sexual offense involving a victim younger than 17 years of age, must be denied bail pending trial unless a judge or magistrate determines by clear and convincing evidence that extraordinary circumstances allow the judge or magistrate to set bail and conditions of release sufficient to reasonably ensure:

(1) the person's appearance in court as required; and  
(2) the safety of the community, peace officers, and the victim of the alleged offense.

(d) In this section, "sexual offense" and "violent offense" have the meanings assigned by Section 11a, Article I, Texas Constitution.

SECTION 3. Chapter 17, Code of Criminal Procedure, is amended by adding Articles 17.021, 17.022, 17.023, 17.024, and 17.028 to read as follows:

Art. 17.021. PRETRIAL RISK ASSESSMENT TOOL. (a) The Office of Court Administration of the Texas Judicial System shall develop and maintain a validated pretrial risk assessment tool that is standardized for statewide use, that is available for use for purposes of Article 17.15, and that:

(1) is objective, validated for its intended use, and standardized;

(2) is based on an analysis of empirical data and risk factors relevant to:

(A) the risk of a defendant intentionally failing to appear in court as required; and

(B) the safety of the victim of the alleged offense, peace officers, and the community if the defendant is released;

(3) does not consider factors that disproportionately affect persons who are members of racial or ethnic minority groups or who are socioeconomically disadvantaged;

(4) has been demonstrated to produce results that are unbiased with respect to the race or ethnicity of defendants; and

(5) is designed to function in a transparent manner with respect to the public and each defendant to whom the tool is applied.

(b) The office shall provide access to the pretrial risk assessment tool to the appropriate officials in all counties at no cost. This requirement may not be construed to require the office to furnish a county official or magistrate with any equipment or support to access or use the pretrial risk assessment tool.

(c) The office shall collect data relating to the use and efficiency of the pretrial risk assessment tool. Not later than December 1 of each even-numbered year, the office shall submit a

report containing the data collected and describing any changes or updates to the pretrial risk assessment tool to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officers of the standing committees of each house of the legislature with jurisdiction over the judiciary.

Art. 17.022. PRETRIAL RISK ASSESSMENT. (a) A magistrate considering the release on bail of a defendant charged with an offense punishable as a Class B misdemeanor or any higher category of offense shall order that:

(1) the personal bond office established under Article 17.42 for the county in which the defendant is being detained, or other suitably trained person, use the validated pretrial risk assessment tool developed under Article 17.021 to conduct a pretrial risk assessment with respect to the defendant; and

(2) the results of the assessment conducted under Subdivision (1) be provided to the magistrate within 48 hours of the defendant's arrest.

(b) A magistrate may not, without the consent of the sheriff, order a sheriff or sheriff's department personnel to conduct a pretrial risk assessment under Subsection (a).

(c) Notwithstanding Subsection (a), a magistrate may personally conduct a pretrial risk assessment using the validated pretrial risk assessment tool developed under Article 17.021.

(d) The magistrate shall consider the results of the pretrial risk assessment before making a bail decision.

Art. 17.023. AUTHORITY TO RELEASE ON BAIL IN CERTAIN CASES.

(a) This article applies only to a defendant charged with an offense:

(1) that is punishable as a felony; or

(2) under Chapter 21 or 22, Penal Code, that is punishable as a Class B misdemeanor or any higher category of offense.

(b) Notwithstanding any other law, a defendant to whom this article applies may be released on bail only by a magistrate who:

(1) is a resident of this state and one of the counties in which the magistrate serves;

(2) has two years of experience as a magistrate;

(3) has completed a training course provided or approved by the Office of Court Administration of the Texas Judicial System on the magistrate's duties under Article 17.022 and duties with respect to setting bail in criminal cases that is at least:

(A) four hours in length if the magistrate is licensed to practice law in this state; or

(B) 16 hours in length if the magistrate is not licensed to practice law in this state;

(4) has passed the examination administered by the Office of Court Administration under Article 17.024(a)(3); and

(5) is not disqualified for the purpose as described by Subsection (c).

(c) A magistrate is disqualified from releasing a defendant on bail under Subsection (b)(5) if the magistrate:

(1) has been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the magistrate's court; or

(2) has resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct have been instituted as provided by Section 33.022, Government Code, and before final disposition of the proceedings.

(d) Beginning September 1, 2023, a magistrate who is qualified to release a defendant on bail under Subsection (b) must complete every state fiscal biennium after becoming qualified a refresher course provided by the Office of Court Administration on the magistrate's duties under Article 17.022 and duties with respect to setting bail in criminal cases.

Art. 17.024. TRAINING AND EXAMINATION ON MAGISTRATES' DUTIES REGARDING BAIL. (a) The Office of Court Administration of the

Texas Judicial System shall:

(1) develop or approve four-hour and 16-hour training courses regarding a magistrate's duties under Article 17.022 and duties with respect to setting bail in criminal cases that are required for magistrates in Article 17.023(b)(3);

(2) develop and maintain a four-hour refresher course regarding a magistrate's duties under Article 17.022 and duties with respect to setting bail in criminal cases that is required for magistrates in Article 17.023(d);

(3) develop and administer an examination that covers the contents of the training courses in Subdivision (1); and

(4) provide for a method of certifying that a magistrate has completed the training course required in Article 17.023(b)(3) and the refresher course required in Article 17.023(d).

(b) The office shall ensure that the training courses in Subsection (a)(1) and the refresher course in Subsection (a)(2) are available online to all magistrates at no cost.

Art. 17.028. BAIL DECISION. (a) Without unnecessary delay but not later than 48 hours after a defendant is arrested, a magistrate shall order, after considering all circumstances and the results of the pretrial risk assessment conducted under Article 17.022, that the defendant be:

(1) denied bail in accordance with this chapter and

other law;

(2) granted personal bond or monetary bail bond with conditions; or

(3) granted personal bond or monetary bail bond without conditions.

(b) In accordance with other law, in making a bail decision under this article, the magistrate shall impose, as applicable, the least restrictive conditions and minimum amount of bail, whether personal bond or monetary bail bond, necessary to reasonably ensure the defendant's appearance in court as required and the safety of the community, peace officers, and the victim of the alleged offense.

(c) Except as specifically provided by other law, in each criminal case, there is a rebuttable presumption that monetary bail, conditions of release, or both monetary bail and conditions of release are sufficient to reasonably ensure the defendant's appearance in court as required and the safety of the community, peace officers, and the victim of the alleged offense. In giving individualized consideration to each case and for purposes of rebutting the presumption established by this subsection, the court is not required to hold a hearing and may rely on the results of the defendant's pretrial risk assessment and other information as applicable.



(d) A judge may not adopt a bail schedule or enter a standing order related to bail that:

(1) is inconsistent with this article; or

(2) authorizes a magistrate to make a bail decision for a defendant without considering the results of the defendant's pretrial risk assessment.

(e) This article does not prohibit a sheriff or other peace officer, or a jailer licensed under Chapter 1701, Occupations Code, from accepting bail under Article 17.20 or 17.22 before a pretrial risk assessment has been conducted with respect to the defendant or before a bail decision has been made by a magistrate under this article.

SECTION 4. Article 17.03(b), Code of Criminal Procedure, is amended to read as follows:

(b) Notwithstanding any other law, a defendant ~~[Only the court before whom the case is pending]~~ may not be released ~~[release]~~ on personal bond if the ~~[a]~~ defendant ~~[who]~~:

(1) is charged with an offense under the following sections of the Penal Code:

(A) Section 19.02 (Murder);

(B) Section 19.03 (Capital Murder);

(C) ~~[(B)]~~ Section 20.04 (Aggravated Kidnapping);

(D) Section 20A.02 (Trafficking of Persons);

(E) Section 20A.03 (Continuous Trafficking of Persons);

(F) Section 21.02 (Continuous Sexual Abuse of Young Child or Children);

(G) Section 21.11 (Indecency with a Child);

(H) Section 22.01 (Assault), if committed against a peace officer or judge;

(I) Section 22.011 (Sexual Assault);

(J) Section 22.02 (Aggravated Assault);

(K) [~~(C)~~] Section 22.021 (Aggravated Sexual Assault);

~~(L) [~~(D)~~] Section 22.03 (Deadly Assault on Law Enforcement or Corrections Officer, Member or Employee of Board of Pardons and Paroles, or Court Participant);~~

~~[(E)] Section 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual);~~

(M) [~~(F)~~] Section 29.03 (Aggravated Robbery);

(N) [~~(G)~~] Section 30.02 (Burglary);

(O) Section 43.04 (Aggravated Promotion of Prostitution);

(P) Section 43.041 (Aggravated Online Promotion of Prostitution);

(Q) Section 43.05 (Compelling Prostitution);

(R) Section 43.25 (Sexual Performance by a Child);

or

(S) [~~(H)~~] Section 71.02 (Engaging in Organized Criminal Activity) [~~+~~

~~[(I) Section 21.02 (Continuous Sexual Abuse of Young Child or Children); or~~

~~[(J) Section 20A.03 (Continuous Trafficking of Persons)];~~

(2) is charged with a felony under Chapter 481, Health and Safety Code, or Section 485.033, Health and Safety Code, punishable by imprisonment for a minimum term or by a maximum fine that is more than a minimum term or maximum fine for a first degree felony; [~~or~~]

(3) is charged with a felony committed while participating in a riot as defined by Section 42.02, Penal Code;

or

(4) does not submit to testing for the presence of a controlled substance in the defendant's body as requested by the court or magistrate under Subsection (c) of this article or submits to testing and the test shows evidence of the presence of a controlled substance in the defendant's body.

SECTION 5. Article 17.032(b), Code of Criminal Procedure, is amended to read as follows:

(b) Notwithstanding [~~Article 17.03(b), or~~] a bond schedule adopted or a standing order entered by a judge, a magistrate shall release a defendant on personal bond unless good cause is shown otherwise if:

(1) the defendant:

(A) is not charged with and has not been previously convicted of a violent offense; and

(B) is not charged with an offense listed in Article 17.03(b);

(2) the defendant is examined by the service provider that contracts with the jail to provide mental health or intellectual and developmental disability services, the local mental health authority, the local intellectual and developmental disability authority, or another qualified mental health or intellectual and developmental disability expert under Article 16.22;

(3) the applicable expert, in a written report submitted to the magistrate under Article 16.22:

(A) concludes that the defendant has a mental illness or is a person with an intellectual disability and is nonetheless competent to stand trial; and

(B) recommends mental health treatment or intellectual and developmental disability services for the

defendant, as applicable;

(4) the magistrate determines, in consultation with the local mental health authority or local intellectual and developmental disability authority, that appropriate community-based mental health or intellectual and developmental disability services for the defendant are available in accordance with Section 534.053 or 534.103, Health and Safety Code, or through another mental health or intellectual and developmental disability services provider; and

(5) the magistrate finds, after considering all the circumstances, a pretrial risk assessment, ~~[if applicable,]~~ and any other credible information provided by the attorney representing the state or the defendant, that release on personal bond would reasonably ensure the defendant's appearance in court as required and the safety of the community, peace officers, and the victim of the alleged offense.

SECTION 6. Article 17.15, Code of Criminal Procedure, is amended to read as follows:

Art. 17.15. RULES FOR SETTING ~~[FIXING]~~ AMOUNT OF BAIL. (a) The amount of bail to be required in any case is to be regulated by the court, judge, magistrate, or officer taking the bail in accordance with Articles 17.20, 17.21, and 17.22 and is ~~[; they are to be]~~ governed ~~[in the exercise of this discretion]~~ by the

Constitution and ~~by~~ the following rules:

(1) [1.] The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.

(2) [2.] The power to require bail is not to be so used as to make it an instrument of oppression.

(3) [3.] The nature of the offense, ~~and~~ the circumstances under which the offense ~~it~~ was committed, and the defendant's criminal history, including acts of family violence, shall ~~are to~~ be considered.

(4) [4.] The ability to make bail shall ~~is to~~ be considered ~~regarded~~, and proof may be taken upon this point.

(5) [5.] The future safety of a victim of the alleged offense, peace officers, and the community shall be considered.

(6) The results of any pretrial risk assessment conducted using the validated pretrial risk assessment tool developed under Article 17.021 shall be considered.

(7) Any other relevant facts or circumstances may be considered.

(b) In this article, "family violence" has the meaning assigned by Section 71.004, Family Code.

SECTION 7. Chapter 17, Code of Criminal Procedure, is amended by adding Articles 17.50 and 17.51 to read as follows:

Art. 17.50. NOTICE OF CONDITIONS. (a) As soon as

practicable but not later than the next business day after the date a magistrate issues an order imposing a condition of release on bond for a defendant or modifying or removing a condition previously imposed, the clerk of the court shall send a copy of the order to:

(1) the appropriate attorney representing the state;

and

(2) either:

(A) the chief of police in the municipality where the defendant resides, if the defendant resides in a municipality;  
or

(B) the sheriff of the county where the defendant resides, if the defendant does not reside in a municipality.

(b) A clerk of the court may delay sending a copy of the order under Subsection (a) only if the clerk lacks information necessary to ensure service and enforcement.

(c) If an order described by Subsection (a) prohibits a defendant from going to or near a child care facility or school, the clerk of the court shall send a copy of the order to the child care facility or school.

(d) The copy of the order and any related information may be sent electronically or in another manner that can be accessed by the recipient.

(e) The magistrate or the magistrate's designee shall provide written notice to the defendant of:

(1) the conditions of release on bond; and

(2) the penalties for violating a condition of release.

(f) The magistrate shall make a separate record of the notice provided to the defendant under Subsection (e).

Art. 17.51. REPORTING OF CONDITIONS. A chief of police or sheriff who receives a copy of an order under Article 17.50(a), or the chief's or sheriff's designee, shall, as soon as practicable but not later than the 10th day after the date the copy is received, enter information relating to the condition of release into the appropriate database of the statewide law enforcement information system maintained by the Department of Public Safety or modify or remove information, as appropriate.

SECTION 8. As soon as practicable but not later than December 1, 2021, the Office of Court Administration of the Texas Judicial System shall make provide access to the appropriate officials in all counties the validated pretrial risk assessment tool developed under Article 17.021, Code of Criminal Procedure, as added by this Act, and any related forms and materials, at no cost. If those items are made available before December 1, 2021, the office shall notify each court clerk, judge or other magistrate, and office of an attorney representing the state.



SECTION 9. As soon as practicable but not later than December 1, 2021, the Office of Court Administration of the Texas Judicial System shall develop or approve and make available the training courses, and develop and make available the refresher course, examination, and certification method required under Article 17.024, Code of Criminal Procedure, as added by this Act. If those items are made available before December 1, 2021, the office shall notify each court clerk, judge or other magistrate, and office of an attorney representing the state.

SECTION 10. The changes in law made by this Act apply only to a person who is arrested on or after the effective date of this Act. A person arrested before the effective date of this Act is governed by the law in effect on the date the person was arrested, and the former law is continued in effect for that purpose.

SECTION 11. (a) Except as provided by Subsections (b) and (c) of this section, this Act takes effect December 1, 2021.

(b) Articles 17.021 and 17.024, Code of Criminal Procedure, as added by Section 3 of this Act, and Sections 8 and 9 of this Act take effect September 1, 2021.

(c) Section 2 of this Act takes effect December 1, 2021, but only if the constitutional amendment proposed by the 87th Legislature, Regular Session, 2021, is approved by the voters to authorize the denial of bail to an accused person if necessary to

ensure the person's appearance in court and the safety of the community, law enforcement, and the victim of the alleged offense, and to require the denial of bail to a person accused of capital murder or a sexual offense involving children under most circumstances. If that amendment is not approved by the voters, Section 2 of this Act has no effect.